

IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA

IN THE DISTRICT REGISTRY OF ARUSHA

AT ARUSHA

MISC. CIVIL APPLICATION NO. 33 OF 2022

(C/F CIVIL CASE NO. 24 OF 2019)

IVANNA FELIX TERI.....APPLICANT

VERSUS

BARCLAYS BANK TANZANIA LIMITED.....1ST RESPONDENT

MS. A.I.M GROUP LIMITED.....2ND RESPONDENT

RULING

25/08/2022 & 13/10/2022

GWAE, J

Ivanna Felix Teri, the applicant is hereby seeking leave to appeal to the Court of Appeal of Tanzania against the whole decision of this court delivered on 15th February 2022 through Civil Case No. 24 of 2019. This application is brought under the provisions of section 5 (1) (c) of the Appellate Jurisdiction Act Cap 141, Revised Edition, 2019 and Rule 45 (a) of the Court of Appeal Rules, 2009 and it is accompanied by the sworn affidavit of the applicant's advocate namely; Mr. Richard V. Massawe where reasons for the application are stated.

The respondents on the other hand objected the application through the sworn counter affidavit of their learned counsel notably; Mr. Edwin Lyaro and Ms. Winjaneth Lema respectively.

The factual background giving rise to the present application is to the effect that, before this court, the applicant filed a suit against the respondents for a claim of payment at the tune of of Tshs. 800,000,000/= being damages for the unauthorized use of the applicant's images in marketing and promoting defendant's services and products. Before hearing commenced the 2nd respondent canvassed a preliminary objection questioning the jurisdiction of the court basing on the claimed general damages. In disposing the preliminary objection, the court's finding was to the effect that, this court has no pecuniary jurisdiction to entertain the matter and went on striking out the suit.

Dissatisfied by the order of the court, the applicant intends to appeal to the Court of Appeal. Abiding to the procedural law, he has rightly filed this application for leave before lodging the intended Appeal to the Court of Appeal of Tanzania. With leave of the court the application was argued by way of written submission which I shall certainly consider while composing the Ruling.

I have carefully read the submission of the 2nd respondent where the learned counsel challenged the application at hand arguing that since the Civil Case No. 24 of 2019 did not originate from the subordinate courts therefore leave need not be sought. However, going through the provision of section 5 (c) of the AJA, it is my increasingly view that, the order of the Hon. Judge striking out the applicant's suit is subject to leave of the High Court or of the Court of Appeal before lodging an appeal to the Court of Appeal.

That being the case, next issue for determination is, whether there are contentious issues necessitating determination by the Court of Appeal. (See the decision of the Court of Appeal of Tanzania in the case of **British Broadcasting Corporation vs. Erick Sikujua Ng'maryo**, Civil Application No. 138 of 2004 (unreported). I have examined the application together with the copy of the ruling intended to be appealed against. It is imperative to know that, the contentious matter before the presiding judge of the applicant's suit was, whether the pecuniary jurisdiction of the court can be ascertained through claimed general damages pursuant to the proviso of section 13 of the Civil Procedure Code, Cap 33, Revised Edition, 2019.


As it appears to be contradictory decisions of this court and that, of the Court of Appeal of Tanzania visa viz the provision of the applicable law (See **Tanzania-China Friendship Textile Co. Ltd vs. Our Lady of Usambara Sisters** (2006) TLR 70) which was delivered before the amendment of section 13 of the CPC (supra) through the Written Laws (Miscellaneous Amendments) Act No. 4 of 2016 and the case law example in **Mwananchi Communications Limited and two others vs Joshua K. Kajula and two others**, Civil Appeal No. 126/01/2016 (Unreported-CAT).

Therefore, it is the strong view of this court that, there is arguable appeal by the Court of Appeal of Tanzania on the pure determinable point of law in order to have appropriate legal guidance.

In the event this application is granted. By virtue of section 5 (1) (c) of the Appellate Jurisdiction Act (supra), and Rule 45 (a) of the Court of Appeal Rules (supra), I hereby grant leave for the applicant to file an appeal to the highest Court of the land. Costs of this appeal shall abide to an outcome of the intended appeal. It is so ordered.

DATED at Arusha this 13th day of October 2022




M. R. GWAE
JUDGE
13/10/2022